

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

VITORIA R. MOREIRA GALVAO,

Complainant,

and

JUAN GOMEZ,

Respondent.

Charge No.: 2002CF1995

EEOC No.: 21BA21429

ALS No.: 04-230

ORDER

This matter coming before the Commission pursuant to a Recommended Order and Decision, and the Complainant's Exceptions filed thereto.

The Illinois Department of Human Rights is an additional statutory party that has conducted state action in this matter. They are named herein as an additional party of record. The Illinois Department of Human Rights did not participate in the Commission's consideration of this matter.

IT IS HEREBY ORDERED:

1. Pursuant to 775 ILCS 5/8A-103(E)(1) & (3), the Commission has **DECLINED** further review in the above-captioned matter. The parties are hereby notified that the Administrative Law Judge's Recommended Order and Decision, entered on **February 16, 2010**, has become the Order of the Commission.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

Entered this 13th day of April 2011.

Commissioner Munir Muhammad

Commissioner Rozanne Ronen

Commissioner Nabi Fakroddin

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IN THE MATTER OF:)	
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VITORIA R. MOREIRA GALVAO,)	
Complainant,)	Charge No: 2002CF1995
)	EEOC No: 21BA21429
and)	ALS No: 04-230
)	
JUAN GOMEZ,)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter is before me following the entry of a default order by the Illinois Human Rights Commission (Commission) on July 7, 2004. A public hearing to determine the amount of damages was set for September 29, 2009. At that time, Respondent did not appear. Complainant appeared through her attorney and moved for a continuance of the damages hearing. The motion was denied. Complainant was allowed time to submit an attorney's fee petition. Complainant has done so. Respondent has filed no objection to the petition. This matter is ready for a decision.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter; therefore, it is named herein as an additional party of record.

FINDINGS OF FACT

The following findings of fact are based on the record in this case:

1. Complainant filed a *Charge of Discrimination*, Charge Number 2002CF1995, with the Illinois Department of Human Rights (Department) on March 5, 2002, amended on November 20, 2002. In the charge, Complainant alleged that she was subjected to violations of the Illinois Human Rights Act (Act), 775 ILCS 775 5/1-101 *et seq.*, by her employer, Milgard Windows, and by Respondent, Juan Gomez, an individual management employee of her employer,
2. On June 4, 2004, the Department filed a *Petition for Hearing to Determine Complainant's Damages* as against Respondent, Juan Gomez, only. The Commission entered an *Order of*

Default against Respondent on July 7, 2004, and ordered that a hearing to determine the amount of damages be held.

3. On March 17, 2005, Respondent's attorney, Carl M. Walsh, moved to withdraw, representing that he had lost contact with his client. The motion was granted by order of March 31, 2005. Respondent was ordered to retain substitute counsel or file his own appearance for the record within twenty-one days. Walsh filed notification of the last known address of Respondent for the record.
4. On March 8, 2005, an order was entered setting a damages hearing for June 7, 2005, pursuant to the default entered against Respondent. On June 6, 2005, Complainant filed an emergency motion to continue the damages hearing. The motion was heard and granted on June 7, 2005.
5. On March 29, 2007, Complainant filed a motion to set a damages hearing pursuant to the default, representing that she had resolved an analogous case against Milgard Windows that was litigated in federal court.
6. Complainant's damages hearing has since been re-scheduled several times all on motion of Complainant. The damages hearing was continued to August 28, 2007, October 16, 2007, January 15, 2008, March 18, 2008, April 29, 2008 and July 15, 2008. The April 29, 2008 order setting the July 15, 2008 damages hearing advised Complainant that she was prohibited from requesting any further extensions. However, Complainant filed yet another motion for continuance representing that Complainant had suddenly fell ill and could not travel to Chicago for the hearing. Complainant attached a doctor's statement in support of her motion. Upon a finding of good cause, I granted the motion. On June 9, 2009, an order issued setting the damages hearing for September 29, 2009. The order again warned that no further extensions would be granted absent a good cause showing.
7. On September 25, 2009, Complainant filed yet another motion to re-schedule the September 29, 2009 damages hearing. The motion was heard at the time scheduled for

hearing. Complainant's motion represented that Complainant had to travel to her country of origin due to a family emergency; however, the motion had no affidavit or other supporting documents attached. The motion was denied.

8. Complainant appeared for several hearings at the Commission for the purpose of rescheduling a date for the damages hearing, including June April 26, 2006, July 11, 2006, September 27, 2006, January 9, 2007, April 10, 2007, July 26, 2007, August 29, 2007, October 16, 2007, January 15, 2008, March 18, 2008, April 28, 2008, July 15, 2008, and June 9, 2009.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" and Respondent is an "employee" as those terms are defined under the Act.
2. The Commission has jurisdiction over the parties and subject matter of this action.
3. Pursuant to the default order, Respondent admits the allegations of sexual harassment in the *Charge of Discrimination*. Section 5/7A-102(B) of the Act.
4. Complainant is entitled to reasonable attorney's fees incurred in the litigation of this matter; however, Complainant is not entitled to actual damages related to her personal injury or loss because she failed to appear for the scheduled hearing to prove-up her damages.

DETERMINATION

Respondent is held in default on the issue of liability pursuant to the *Order of Default* issued July 7, 2004. Complainant is entitled to reasonable attorney's fees in the amount of \$ 8,555.00 and costs in the amount of \$488.00.

DISCUSSION

Complainant filed a *Charge of Discrimination*, Charge Number 2002CF1995, with the Department on March 5, 2002, amended on November 20, 2002. On June 4, 2004, the Department filed a *Petition for Hearing to Determine Complainant's Damages* as against Respondent. The Commission entered an *Order of Default* against Respondent on July 7, 2004,

and ordered that a hearing to determine the amount of damages be held. Pursuant to the default order, Respondent admits the allegations of sexual harassment in the charge, filed August 17, 2006. *Karla Payne and Roseland Christian Health Ministries, Inc.*, IHRC, ALS No. 11591, Jan 27, 2003.

On March 17, 2005, Respondent's attorney, Carl M. Walsh, moved to withdraw, representing that he had lost contact with his client. The motion was granted by order of March 31, 2005. Respondent was ordered to retain substitute counsel or file his own appearance for the record within twenty-one days. Attorney Walsh filed notification of the last known address of Respondent for the record. Respondent did not retain substitute counsel and did not comply with the order to file an appearance. After the withdrawal of Attorney Walsh, Respondent made no subsequent appearances in this matter.

On March 8, 2005, an order was entered setting a damages hearing to begin June 7, 2005. On June 6, 2005, Complainant filed an emergency motion to re-schedule the damages hearing. The motion was heard and granted on June 7, 2005. On March 29, 2007, Complainant filed a motion to set a damages hearing. Since then, the litigation of this matter has primarily consisted of Complainant filing motions to re-schedule the damages hearing. The damages hearing was re-scheduled to begin August 28, 2007, October 16, 2007, January 15, 2008, March 18, 2008, April 29, 2008, and July 15, 2008. The April 29, 2008 order scheduling the damages hearing for July 15, 2008, prohibited Complainant from requesting any further extensions. However, Complainant again filed a motion for continuance due to illness of Complainant. After a showing of good cause, the damages hearing was continued, generally. On June 9, 2009, an order issued setting the damages hearing for September 29, 2009. The order again warned that no further extensions would be granted absent a showing of good cause.

Complainant filed a motion to re-schedule the September 29, 2009, damages hearing on September 25, 2009. The motion was heard at the time scheduled for the damages hearing. The motion represented that Complainant had to make a trip to her country of origin due to a

family emergency; however, the motion had no affidavit or other supporting documents attached. I denied the motion.

Damages

Cease and Desist Order

Pursuant to the Commission default order, a cease and desist order pursuant to Section 5/8A-104(A) should be entered against Respondent, despite the fact that Complainant did not appear for the damages hearing. *Magraff and Alexopolis*, IHRC, ALS No. 7082, November 8, 1993.

Attorney's fees

Commission precedent has consistently held that when a respondent has been defaulted and the complainant subsequently fails to appear to prove up her damages, the default previously entered by the Commission should stand and the proper sanction for complainant's failure to proceed should be the denial of damages or attorney's fees. *Magraff and Alexopolis*, IHRC, ALS No. 7082, November 8, 1993. However, while an award for actual damages related to injury or loss suffered by Complainant is clearly not justified in this matter, the circumstances here support that attorney's fees should be awarded.

What distinguishes these facts from other cases where the complainant failed to appear to prove up her damages is that here, Complainant's attorney appeared at the time of the damages hearing and the record shows she has diligently appeared on behalf of Complainant throughout these proceedings. The record further shows that Complainant's counsel has used her best efforts to produce her client for hearing; however, these efforts have been thwarted due to the fact that Complainant moved to Florida while this matter was pending. Because of her relocation, Complainant experienced challenges in arranging to take leave time from her job and in making arrangements for child care while taking the trip to Chicago. While I denied Complainant's last motion to continue the damages hearing, it does not serve justice to deny an

award of attorney's fees to her attorney, who has represented this cause at the Department and the Commission for the past five years.

Upon a finding of liability, Section 5/8A-104 of the Act provides for a recommendation of enumerated relief in combination or separately — among this relief is an award of attorney's fees and costs. I find that awarding attorney's fees under these circumstances is consistent with the Act's intent to provide an effective means of access to the judicial process to victims of civil rights violations who might not otherwise have the means to retain counsel. *Clark and Champaign National Bank*, IHRC, ALS No. 354(J), July 2, 1982.

In *Clark and Champaign National Bank*, *supra*, the Commission set forth guidelines to be considered in awarding attorney's fees. The burden of proof for requesting attorney's fees rests with the Complainant. Complainant submits a written motion for attorney's fees and six separate fee and costs itemizations.

Appropriate Hourly Rate

When considering a fee petition, it is first necessary to establish a reasonable hourly rate. An appropriate hourly rate is generally dependent upon the actual hourly rate the attorney charges, the experience of the attorney and the prevailing community rate for similar legal services. *Clark and Champaign National Bank*, *supra*. Complainant presents the affidavit of Barbara A. Susman, lead attorney in this matter, in support of this petition. Susman files an affidavit and billing itemization as to the time spent and hours billed for services performed by her, various associates and other staff employed at her law firm.

Susman states that she is the principal attorney of the law firm of Susman & Associates, which was established over twenty years ago. Susman says that her firm is an AV-rated law firm with a boutique practice focused on international and employment-based immigration and related legal matters. Susman states her billing rate for this litigation as \$295.00 per hour. I find Susman's hourly rate adequately supported and reasonable for the litigation of this matter.

Susman's petition identifies over twenty different attorneys, paralegals and other staff who billed for services in this matter. I find the number of professional staff assigned to this matter to be unreasonable for reasons that will be addressed later in this decision. Therefore, fees will only be awarded for the lead attorney in this matter, Susman.

Reasonable Number of Hours Worked

Once the hourly rate is decided upon, the next step is to determine whether the hours claimed are justified. In total, Complainant requests \$379,498.75 in attorneys' and professional fees for 1,429.25 hours of services. Complainant submits six separate invoices of itemized services, fees and costs. Just as I find Complainant's employ of over twenty professionals to litigate this claim to be unreasonable, I similarly find most of the line itemizations to be unreasonable.

Susman began her representation of Complainant in July, 2002, while the matter was under the Department's jurisdiction. The Commission entered an order of default against Respondent in July, 2004, and directed that a hearing be held for the purpose of determining the amount of damages. A discovery schedule was entered, but little discovery was had as Respondent's attorney withdrew in March, 2005, citing his failure to make contact with his client. The March 8, 2005 order set a damages hearing for June 7, 2005. On the date of the hearing, Complainant filed an emergency motion to continue the hearing, which was granted. Subsequently, the litigation in this matter has consisted almost entirely of Complainant's attorney appearing on Complainant's own motions to re-schedule dates for the damages hearing. I note that Complainant also brought analogous claims against Respondent's employer, Milgard Windows, here at this Commission and in federal court. That matter was resolved in the federal forum and the Milgard claims pending before the Commission were subsequently dismissed.

Based on these facts, it is difficult to reconcile Complainant's request for \$379,498.75 in attorneys' and professional fees when the litigation of this matter primarily consisted of a short unfruitful discovery period and appearances on motions to continue.

In making a reasonable fee request, the Commission has advised that a prevailing counsel must resist the temptation of pushing the sword in a little deeper merely because she has emerged victorious. *Clark and Champaign National Bank, supra*. While Susman maintains in her petition that fees relating exclusively to the federal court litigation against Milgard Windows have been culled out and that much of the legal services performed were necessary services common to both cases, I remain unconvinced that such a large fee amount can reasonably be attributed to the litigation of a default matter that entailed little discovery and where no damages prove-up hearing was held. Fee applications that are excessive or inflated simply cannot be tolerated. The Act provides that attorney's fees *may* be allowed (See, Section 5/8B-104 of the Act) and the Commission has recognized that the complete denial of a request for attorney's fees is justified where the claim for fees is manifestly unreasonable. *Clark and Champaign National Bank, supra*, citing *Brown v. Stackler*, 612 F.2d 1057 (7th Cir. 1980). In *Clark*, the Commission further acknowledged the utility of adjusting fees downward where the litigation of a case is relatively simple.

With this approach – as set forth by the Commission – in mind, I now address each specific invoice. Requests for expenses will be addressed separately

July 10, 2008 Volume 1 - For legal services and costs incurred from February, 2002 through February 18, 2005.

Complainant requests \$241,155.30 for 888.45 hours of legal services performed for this time period. I find 888.45 hours to be unreasonable for this litigation for this three-year period, much of which was spent in the Department investigatory proceedings. Therefore, I find it reasonable to award Complainant for 20 hours of legal services at Susman's rate of \$295.00 per hour (20 x \$295.00 = \$5,900.00) for this time period.

July 10, 2008 Volume II - For legal services rendered and costs from February 15, 2005 through January 10, 2008

Complainant requests \$60,328.75 for 226.75 hours of legal work incurred during this period. I find 226.75 hours to be unreasonable for the litigation of this matter for this three-year time

period since the only substantive action in the record during this period was related to Complainant's motion for sanctions, filed in March, 2005. I find it reasonable to award Complainant for four hours of time at Susman's hourly rate of \$295.00 for this period (4 X \$295.00 = \$1,180.00).

July 14, 2008 Volume III - For legal services from January 11, 2008 through July 14, 2008

Complainant requests \$19,726.25 for 86 hours of legal services rendered for this time period. I find 86 hours to be unreasonable for the litigation of this matter for this six-month time period since the only substantive action in the record during this period was related to Complainant's several motions to continue the damages hearing. I find it reasonable to award Complainant for four hours of time at Susman's hourly rate of \$295.00 for this period (4 X \$295.00 = \$1,180.00).

October 17, 2009- Volume IV For legal services and costs incurred from July 15, 2008 through October 29, 2009

Complainant requests \$5,871.25 for 20.75 hours of legal services rendered for this time period. I find 20.75 hours to be unreasonable for the litigation of this matter for this fifteen-month time period since the only substantive action in the record during this period was related to Complainant's several motions to continue the damages hearing. I find it reasonable to award Complainant for four hours of time at Susman's hourly rate of \$295.00 for this period (4 X \$295.00 = \$1,180.00).

October 20, 2009 – Supplemental Invoice for legal services from January 1, 2002 through October 20, 2009

Complainant requests \$25,685.00 for 116.75 hours of legal services for this time period. A review of the explanation for the specific services provided shows that a vast majority of the work performed here was related to researching federal law and procedure, preparation for depositions, issuing subpoenas and interviewing witnesses. These services appear to have been related to the analogous federal matter against Respondent's employer and were

obviously not linked to the litigation of this default case before the Commission. Therefore, these fees are disallowed as not reasonably related to the litigation of this matter.

Costs

October 20, 2009 - Expenses incurred

Complainant requests \$10,925.78 in costs incurred from March 5, 2002 until October 20, 2009. I find it unreasonable that \$10,925.78 of costs were incurred for the litigation of this simple default matter. I also note that some of these expenses are for airline tickets, meals, transcript costs, and deposition costs. Complainant submits no explanation for such expenses and the record shows no order granting leave of tribunal to take any depositions. I find that this request for such fees lacks adequate support. However, Complainant lists \$488.00 of costs incurred for copying services and I find this amount to be reasonable.

RECOMMENDATION

Based on the foregoing, it is recommended that the Commission:

- A. Sustain the Default Order against Respondent;
- B. Order that Respondent cease and desist engaging in sexual harassment;
- C. Award Complainant attorney's fees in the amount of \$9,440.00;
- D. Award Complainant costs in the amount of \$488.00.

HUMAN RIGHTS COMMISSION

ENTERED: February 16, 2010

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section